

subpart, the “Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges” established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

**§ 655.830 Service and computation of time.**

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

**§ 655.835 Administrative law judge proceedings.**

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 655.820 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within 7 calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator’s determination. Because of the time constraints imposed by the INA, no request for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § 655.830 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § 655.830 of this part.

**§ 655.840 Decision and order of administrative law judge.**

(a) Within 60 calendar days after the date of the hearing, the administrative law judge shall issue a decision. If any party desires review of the decision, including judicial review, a petition for Secretary’s review thereof shall be filed as provided in § 655.845 of this subpart. If a petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Secretary issues an order affirming the decision, or, unless and

until 30 calendar days have passed after the Secretary's receipt of the petition for review and the Secretary has not issued notice to the parties that the Secretary will review the administrative law judge's decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to §655.731(d) of this part), and the administrative law judge determines that the Administrator's request was not warranted (under the standards in §655.731(d) of this part), the administrative law judge shall remand the matter to the Administrator for further proceedings on the issue(s) of the existence of wage violation(s) and/or the amount(s) of back wages owed. If there is no such determination and remand by the administrative law judge, the administrative law judge shall accept such wage determination as accurate. Such wage determination is one made by ETA, from which the employer did not file a timely complaint through the Employment Service complaint system or from which the employer has appealed through the ES complaint system and a final decision therein has been issued. See §655.731 of this part; see also 20 CFR 658.420 through 658.426. Under no circumstances shall the administrative law judge determine the validity of the wage determination or require source data obtained in confidence by ETA or the SESA, or the names of establishments contacted by ETA or the SESA, to be submitted into evidence or otherwise disclosed.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

**§ 655.845 Secretary's review of administrative law judge's decision.**

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;
- (4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
- (5) Be signed by the party filing the petition or by an authorized representative of such party;
- (6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and
- (7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify: